

341st CONS



"Takin Care of Business"

***Home of the
Two-Time AFSPC
Top Dollar
Champions!***





Claims



- Claims defined
- FAR Clauses
- Basis for Claims
 - Changes
 - Constructive Changes
 - Delays
 - Breach of Implied Duties
 - Mistake
- Allowable Compensation



Claims



- Claim defined - FAR 33.201
 - “a written demand, as a matter of right”
 - seeking payment of a “sum certain” or adjustment or interpretation of contract terms
 - “arising under or relating to a contract”
 - certification required if over \$100K
- Customer/requiring activity must be advised and involved
- CO required to respond w/i 60 days



Claims



- **Contract Clauses**
 - FAR 52.233-1 Disputes (Contract Disputes Act of 1978)
 - FAR 52.243-1 Changes - Fixed-Price
 - FAR 52.243-4 Changes (used in construction contracts)
 - FAR 52.242-17 Government Delay of Work
 - FAR 52.242-14 Suspension of Work
 - FAR 52.236-2 Differing Site Conditions



Claims



- **The Changes Clause - FAR 52.243-1**
 - The CO may, at any time, by written order, without notice to sureties make changes within the general scope of the contract in any one or more of the following:
 - Drawings and specs
 - Method of shipment or packing
 - Place of delivery



Claims



- Changes - fixed-price
 - Contractor must assert its right to an adjustment within 30 days from receipt of a written order.
- What if -
 - No written notice from contractor is received within 30 days?
 - No written order is given?
 - Change is outside the general scope of contract?



Claims



- **Constructive Change Doctrine**
 - Any oral direction, instruction, interpretation or determination which can be reasonably construed as a change to the contract.
- **What if -**
 - The oral directive comes from someone other than a CO?



Claims



- Changes Clause-Construction FAR 52.243-4
 - The CO may, at any time, without notice to sureties, **by written order designated or indicated to be a change order**, make changes within the general scope of the contract, including:
 - Drawings and specs
 - **Method or manner of performance**
 - **In GFP, GFM or site**
 - **Acceleration in performance of the work**



Claims



- **Changes Clause - Construction**
 - Provides for adjustment based on oral “direction, instruction, interpretation or determination.”
- Contractor must provide written notice that it considers the action to be a change
- No adjustment shall be allowed for costs incurred more than 20 days before Contractor’s written notice to CO, **except for an adjustment based on defective specs.**



Claims



- Impact Under Changes Clause
 - “If any change increases or decreases a contractor’s cost of, or time required for, performance . . . the Contracting Officer **shall** make an **equitable adjustment** in the contract price, the delivery schedule, or both, and **shall** modify the contract.”
 - Profit included



Claims



- Equitable adjustment
 - What is it?
 - Claim?
 - Failure to agree to an adjustment shall be a dispute
 - Contractor required to continue performance
 - Certification required?
 - DFARS 243.2



Claims



- Impact under delay of work clauses
 - An adjustment to the cost of performance (excluding profit) and delivery or performance dates



Claims



- Differing Site Conditions - FAR 52.236-2
 - Allows for additional compensation when subsurface or unknown latent physical conditions are experienced that differ materially from those indicated in the contract.
 - Contractor must notify the Contracting Officer before conditions are disturbed.



Claims



- **Claims for Breach of Contract**
 - Breach of implied duties
 - Cooperation
 - Good faith and fair dealing
 - Implied warranty of adequacy of specifications
 - Cardinal Changes
- **Claims for Mistake**
 - Unilateral vs. Bilateral



Claims



- Modifications in Settlement of Claims
 - Must include release language
 - Must have legal review and approval regardless of dollar value



Claims



- What if -
 - Contractor submits a legally deficient claim?
 - Contractor submits an unsupported claim?
 - Contractor understates cost impact and we know it?



Claims



- Conclusion

- Evaluate:

- Has a claim been submitted?
 - Are all legal requirements present?
 - Has adequate supporting data been submitted?
 - Has customer/requiring activity evaluated the claim?
 - Has a valid basis for a claim been alleged?
 - Has SJA reviewed claim?
 - Does modification include release & satisfaction?